

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YNGWIE MALMSTEEN,

Plaintiff,

v.

CLEOPATRA RECORDS, INC., BHP
MUSIC, LTD., and RON KEEL,

Defendants.

Case No. 09 CV 9056 (PG)
ECF Case

DECLARATION OF BRIAN
PERERA IN SUPPORT OF
MOTION BY DEFENDANTS
CLEOPATRA RECORDS, INC.
AND BHP MUSIC, LTD. TO
TRANSFER ACTION

I, BRIAN PERERA, declare as follows, pursuant to 28 U.S.C. § 1746:

1. I have personal knowledge of the facts herein, and could and would so testify if called upon to do so. I am an officer of defendant and moving party Cleopatra Records, Inc. ("Cleopatra"). I make this declaration in support of the motion by Cleopatra and defendant BHP Music, Ltd. to transfer this action to the United States District Court for the Central District of California.

2. Cleopatra is a California corporation formed in 1994. We are located in Los Angeles, and we have always been located here. We have never had an office in any other city. We have no employees in New York.

3. On October 8, 1998, Cleopatra entered into an agreement with Triage Records, Inc. ("Triage"), in which Cleopatra licensed a series of "tribute" recordings for release on our label. Triage is located in Santa Monica, California, and all negotiations took place in Los Angeles. A true and correct copy of this agreement is attached as Exhibit A and incorporated by reference. On June 22, 1999, Cleopatra entered into an Addendum to the agreement, in which the term of the agreement was extended, to perpetuity. These agreements were negotiated between Richard Donalashen, of Triage, and Brian McNelis, who was Cleopatra's general manager at the time. Both Mr. Donalashen and Mr. McNelis reside in the Los Angeles area at the present time.

4. Pursuant to that agreement, we paid Triage an advance of \$300,000, for the recordings comprising three albums.

5. Pursuant to that agreement, Triage, working with producer Robert Kulick in Van Nuys, California, in 1998, delivered the three albums to Cleopatra. Included on those three albums were the tracks entitled “Mr. Crowley” (which was for an Ozzy Osbourne tribute), and “Dream On” (which was for an Aerosmith tribute).

6. With regard to the recording entitled “Light Up the Sky” (which was for a Van Halen tribute), we obtained that track from Robert Kulick directly, although I am informed that Shrapnel Records, in San Francisco, California, was involved in the original release of the recording.

7. With regard to the recording entitled “Magical Mystery Tour,” although I believe the track was produced by Mr. Kulick at his studio in Van Nuys, California, Cleopatra has never released that recording.

8. Our company pays Triage every quarter, and, on this statement, are royalties for the recordings entitled “Dream On” and “Mr. Crowley.” Attached hereto as Exhibit B is a true and correct copy of the statement for the period ending December 31, 2009, to Triage. According to our agreement with Triage, that company, and not Cleopatra, is supposed to pay the recording artist for each “tribute” track, that is, Mr. Malmsteen.

9. There are other witnesses involved in the recordings that are located in California. Besides Mr. Donalashen from Triage, there are two other individuals I believe have personal knowledge of the arrangement between Triage and Mr. Malmsteen, with regard to the “tribute” tracks: John Greenburg and Tim Heyne, who are also officers of Triage.

10. To the extent that we determine that Triage has breached its warranties to us with regard to the recordings involved in this litigation, it will be come

necessary to bring in Triage on a third-party complaint.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed on April 26, 2010, at Los Angeles, California.

/s/

BRIAN PERERA